



July 11, 2018

Office of the Attorney General  
Open Records Division  
209 W. 14th Street, 6th Floor  
Austin, TX 78701  
*Via Federal Express*

Dear General Paxton:

Thank you for the opportunity to consider exceptions to disclosure under the Public Information Act of certain trade secrets, confidential, and proprietary information of Texas Pregnancy Care Network contained in the following documents:

- The BriteWorks Program Compliance Manual, and
- Form H and a Revised Form H (approximately 28 pages long) from Texas Pregnancy Care Network's response to a Request for Applications (RFA) issued by Texas Health and Human Services for Alternatives to Abortion, RFA No. HHS0000502, Date of Release: January 3, 2018, and
- Form H and a Revised Form H included in two separate and distinct parts of the resulting contract, THE HEALTH AND HUMAN SERVICES COMMISSION CONTRACT NO. HHS000050200002 UNDER THE ALTERNATIVES TO ABORTION GRANT PROGRAM, and
- Any other places where the BriteWorks Program Compliance Manual, Form H or a Revised Form H may be included in any documents issued by Texas Health and Human Services.

We specifically seek exception to disclosure under sections 555.110 (a) and (b).

Texas Pregnancy Care Network's responses to RFA No. HHS0000502 (Date of Release: January 3, 2018) and the resulting contract with Texas Health and Human Services disclose large parts of a Program Compliance Manual which is utilized by Texas Pregnancy Care Network in order to operate the Texas Program. The Program Compliance Manual is trade secret (based on the RESTATEMENT OF TORTS definition) because it a formula, pattern or compilation of information which is used in Texas Pregnancy Care Network's business, and gives Texas Pregnancy Care Network an opportunity to obtain an advantage over competitors who do not know or use it. It differs

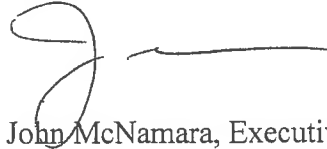
from other secret information in a business in that it is not simply information as to single or ephemeral events in the conduct of the business, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. The Program Compliance Manual discloses the entire process for operation of the business.

The enclosed sworn affidavit of John McNamara, Texas Pregnancy Care Network's Executive Director, provides a prima facie case that the Program Compliance Manual, which is quoted and discussed at length in Form H of the RFA response and resulting contract are trade secrets of Texas Pregnancy Care Network, and are thus exempted from disclosure under the Public Information Act.

The sworn affidavit also presents a specific factual or evidentiary showing that substantial competitive injury will likely result from disclosure of the Program Compliance Manual or Form H, in which the Program Compliance Manual is quoted and described in great detail.

If you should have any questions or concerns, please do not hesitate to contact me or John McNamara at TPCN.

Very Truly Yours,  
TEXAS PREGNANCY CARE NETWORK

A handwritten signature in black ink, appearing to be 'John McNamara', with a long horizontal line extending to the right.

John McNamara, Executive Director

Enclosures

✓ cc: Mr. Daniel Stevens, Executive Director, Campaign for Accountability

## **AFFIDAVIT OF JOHN MCNAMARA**

I. John McNamara, upon first being duly sworn, depose and state:

1. My name is John McNamara. I am the Executive Director of Texas Pregnancy Care Network, a Texas non-profit corporation. I am over the age of eighteen (18) years. I have never been convicted of a crime of moral turpitude, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, and they are all true and correct.
2. On June 26, 2018, Texas Pregnancy Care Network received the attached letter dated June 25, 2018, from Mr. Robert W. Patterson, Open Records Coordinator of the Texas Health and Human Services Commission. The stamp on the envelope showing "Received 6/26/2018" is a true and accurate statement of the date the letter was received by Texas Pregnancy Care Network in the U.S. mail.
3. On July 11, 2018, I personally deposited Texas Pregnancy Care Network's response to Mr. Patterson's letter (addressed to the Office of the Attorney General) in a Federal Express drop box prior to its assigned pick-up time. At the same time I personally deposited a copy of the response addressed to Mr. Daniel E Stevens in a Federal Express drop box prior to its assigned pick-up time.
4. Since 2006, Texas Pregnancy Care Network has been the prime contractor with Texas Health and Human Services Commission ("HHSC") to operate the Texas Alternative to Abortion Services Program. Texas Pregnancy Care Network operates the program using the BriteWorks Pregnancy System, a complete operational system for a state-funded alternative to abortion program. The BriteWorks System was developed by TruthWorks, LLC, an Oklahoma limited liability company. TruthWorks, LLC licenses the BriteWorks system to Texas Pregnancy Care Network.
5. The BriteWorks System is currently in use in only one state - Texas. I am aware of only one other comprehensive and time-tested system to operate a state-funded alternative to abortion services program other than BriteWorks.
6. The BriteWorks System includes the following copyrighted and proprietary materials and information: software, documents, forms, checklists, staff training materials, service provider program manuals, billing systems, and program management tools designed to administer a statewide alternatives to abortion services program, including procedures, reports, and accounting manuals.
7. As part of its agreement to license the BriteWorks System, TruthWorks, LLC contractually requires that Texas Pregnancy Care Network utilize a Program Compliance Manual. Texas Pregnancy Care Network utilizes the Program Compliance Manual with its contractors who provide services under the Texas Alternative to Abortion Services Program. The Program Compliance Manual describes a system whereby program service providers can operate their programs in compliance with the rules put in place by Texas Pregnancy Care Network and TruthWorks, LLC.

8. The Program Compliance Manual describes a unique and novel process whereby the service providers, who have the greatest vested interest in the alternative to abortion movement continuing, become fully operational in the transparent and accountable BriteWorks Pregnancy System.
9. Texas Pregnancy Care Network recently submitted a response to a Request for Applications (RFA) issued by Texas Health and Human Services for Alternatives to Abortion, RFA No. HHS0000502, Date of Release: January 3, 2018. Part of Texas Pregnancy Care Network's response to the RFA included exact excerpts and summarized conclusive information from the BriteWorks Program Compliance Manual. This information was specifically included in Form H of Texas Pregnancy Care Network's proposal. As a result, Texas Pregnancy Care Network is claiming that all of the following are protected from public disclosure:
  - a. The BriteWorks Program Compliance Manual, and
  - b. Form H and a Revised Form H (approximately 28 pages long) from Texas Pregnancy Care Network's response to a Request for Applications (RFA) issued by Texas Health and Human Services for Alternatives to Abortion, RFA No. HHS0000502, Date of Release: January 3, 2018, and
  - c. Form H and a Revised Form H included in two separate and distinct parts of the resulting contract, THE HEALTH AND HUMAN SERVICES COMMISSION CONTRACT NO. HHS000050200002 UNDER THE ALTERNATIVES TO ABORTION GRANT PROGRAM, and
  - d. Any other places where the BriteWorks Program Compliance Manual, Form H or a Revised Form H may be included in any documents issued by Texas Health and Human Services.
10. The Program Compliance Manual and Form H of Texas Pregnancy Care Networks response to RFA No. HHS0000502 are trade secrets (based on the RESTATEMENT OF TORTS definition) because they are a formula, pattern or compilation of information which is used in Texas Pregnancy Care Network's business, and gives Texas Pregnancy Care Network an opportunity to obtain an advantage over competitors who do not know or use it. It differs from other secret information in a business in that it is not simply information as to single or ephemeral events in the conduct of the business, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. The Program Compliance Manual is a process for continuous use in the operation of the business.
11. The RESTATEMENT OF TORTS identifies several factors to be assessed when determining whether information qualifies as a trade secret. The first factor is the extent to which the information is known outside of the company's business. Texas Pregnancy Care Network ensures that only its contracted service providers are aware of the Program Compliance Manual by marking its contractor agreements with a legend that reads "Please Note: The BriteWorks Pregnancy System (which includes, but is not limited to the BriteWorks online billing system, this Program manual, and all associated BriteWorks Program manuals and documents) is the confidential and proprietary information of TruthWorks, LLC, and may not be shared with or provided to any third party that is not contractually providing services as a part of the Texas

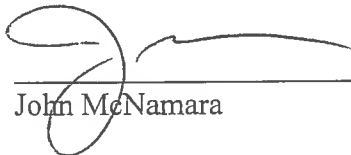
Alternative to Abortion Services Program without the prior written permission of Texas Pregnancy Care Network”. Further, each contractor covenants not to disclose confidential information as part of its Provider Agreement. At this point, I do not believe that anyone other than Texas Pregnancy Care Network, its contractors, HHSC, and TruthWorks, LLC have any knowledge of the Program Compliance Manual.

12. Another factor to be assessed when determining whether information qualifies as a trade secret is the extent of measures taken by the company to guard the secrecy of the information. Texas Pregnancy Care Network goes to great lengths to ensure that its trade secrets are guarded from disclosure. For example, Texas Pregnancy Care Network requires its Executive Director to be a licensed attorney. One of the reasons for this requirement is so that the Executive Director can specifically guard against release of its trade secrets. As Executive Director I spend at least several hours a week ensuring that Texas Pregnancy Care Network’s trade secrets, including the Program Compliance Manual, are not disclosed. Additionally, as mentioned above, Texas Pregnancy Care Network places covenants in its contracts to ensure that its trade secrets are not revealed by its contracted service providers. Finally, Texas Pregnancy Care Network has spent thousands of dollars in legal fees paid to outside counsel to ensure that its trade secrets are not inadvertently released.
13. Finally, another factor to be assessed when determining whether information qualifies as a trade secret is the ease or difficulty with which the information could be properly acquired or duplicated by others. The Program Compliance Manual system is a part of the BriteWorks System which is operating solely in Texas. To the best of my knowledge, the BriteWorks System has not been replicated or duplicated anywhere in the country. Many states have state funded alternative to abortion programs, but most of them have experienced significant legal challenges and setbacks to their programs because they are not utilizing the time-tested BriteWorks System. Each time Texas Pregnancy Care Network has answered HHSC’s Request for Proposal, competing proposals have been offered from other organizations; however, none of the competing proposals was able to duplicate or acquire a system similar to the proven BriteWorks System and so none of the other proposals has been successful in challenging Texas Pregnancy Care Network or the BriteWorks System.
14. Not only is the Program Compliance Manual a trade secret, the release of the information in the Program Compliance Manual would be likely to cause Texas Pregnancy Care Network substantial competitive harm. The Program Compliance Manual is a very important part of the BriteWorks System as it enables Texas Pregnancy Care Network to continue to successfully operate the Texas Alternative to Abortion Services Program. If this vital trade secret procedure was to be released to the public it would present competitors with previously unknown information about the BriteWorks System and present them with one of Texas Pregnancy Care Networks key competitive advantages, which was previously a well-kept trade secret. Competitors bidding for the Texas Alternative to Abortion Services Program during the next Request for Proposal from HHSC would most likely utilize the information to help them replicate a Program Compliance Manual for their proposal. The Texas legislature recently increased the funding for the Texas Alternative to Abortion Services Program. Thus, assuming the program does not receive another increase in funding, the release of the information concerning the Program Compliance Manual would likely cause Texas Pregnancy Care Network

millions of dollars of harm annually because it would strongly jeopardize Texas Pregnancy Care Network's ability to win the next Request for Proposal.

15. The BriteWorks System has been an important factor in Texas Pregnancy Care Network being awarded the contract for the Texas Alternative to Abortion Services Program, and failure of Texas Pregnancy Care Network to secure the licensing of the BriteWorks System would substantially jeopardize Texas Pregnancy Care Network's ability to secure the Alternative to Abortion Program award in the future. This occurrence would cost Texas Pregnancy Care Network \$5.15 million annually for fiscal years 2014 and 2014.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
John McNamara

7/11/18  
\_\_\_\_\_  
Date

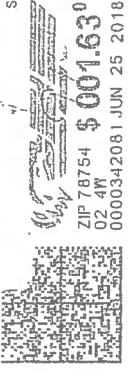
**ATTACHMENT**

Texas Health and Human Services Commission  
4900 North Lamar, MC-1100  
Austin, Texas 78751

RECEIVED  
JUN 25 2018

John McNamara, Esq.  
Executive Director  
Texas Pregnancy Care Network  
1101 South Capital of Texas Highway  
Building K, Suite 250  
Austin, Texas 78746

Official State Mail  
Penalty for Private Use  
Return Services Requested







# TEXAS

## Health and Human Services

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June 25, 2018

John McNamara, Esq.  
Executive Director  
Texas Pregnancy Care Network  
1101 South Capital of Texas Highway  
Building K, Suite 250  
Austin, TX 78746

Re: Public Information Act notification of request for proprietary information

Dear Mr. McNamara:

*The Health and Human Services Commission has received a request for certain documents pertaining to the Commission's recent contract executed with TPCN. As indicated in the attached letter to the Attorney General, some of the information at issue may be subject to an exception to required public disclosure under the Texas Public Information Act for information that is proprietary to your company. We are required to provide notice of the request to the supplier of the information to enable the supplier to claim an exception. The following text is a form notification prescribed by the Office of the Attorney General for the State of Texas pursuant to Texas Government Code section 552.305(d):*

We have received a formal request to inspect or copy certain information held by your company. The attorney general's office is reviewing this matter and they will issue a decision on whether Texas law requires us to release your papers. Generally, the law requires that we release all requested information, but there are exceptions. As described below, you have the right to object to the release of your papers, to submit briefing to the attorney general, and to argue that one or more exceptions apply to your papers. If you want to file any objections and briefing, you must do so immediately. If the attorney general's office does not receive your objections and briefing within 10 business days, it could conclude that no exception applies and they may rule that your papers must be released.

The requested information may be excepted from disclosure by sections 552.101, 552.110, 552.113, or 552.131 of the Texas Public Information Act (the "Act"), chapter 552 of the Government Code. A copy of the request for information is enclosed (**Exhibit A**) for your inspection. Pursuant to section 552.301 of the Government Code, we are seeking an attorney general decision to determine whether we must release the requested information. *See Exhibit B.* We are providing the Attorney General with a copy of the request for information and a copy of the requested information, along with other materials required by the Act.

Under the Act, all information held by governmental bodies is open to public disclosure unless it falls within one of the Act's specific exceptions to disclosure. The Act places on the custodian of records the burden of demonstrating that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). However, in cases such as this one, where a third party's property interest is implicated, the governmental body may rely on the third party to establish that the information should be withheld under applicable exceptions intended to protect those interests. Gov't Code § 552.305; Open Records Decision No. 542 (1990).

If you wish to claim that the requested information is protected proprietary information, you have the right to submit additional information or legal briefing to the attorney general. You are not required to submit briefing to the attorney general, but if you decide not to submit briefing, the Office of the Attorney General will presume that you have no property interest in the requested information. In other words, your failure to take timely action may result in the requested information being released to the public. If you decide to submit briefing, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit briefing to the attorney general, you must:

- (1) identify the legal exceptions that apply;
- (2) identify the specific parts of each document that are covered by each exception; and
- (3) explain why each exception applies.

See Tex. Gov't Code § 552.305(d).

A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436. You may contact this office to review the information at issue in order to make your arguments. The Act does not require the attorney general to raise and consider exceptions that have not been raised. The attorney general is generally required to issue a decision within 45 working days. You must send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

**In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General.** Tex. Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Tex. Gov't Code § 552.305(e).

#### **Commonly Raised Exceptions**

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly-claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

#### **Section 552.101: Information Made Confidential by Law**

Open Records Decision No. 652 (1997).

#### **Section 552.110: Trade Secrets and Commercial or Financial Information**

##### Trade Secrets:

*Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

Open Records Decision No. 552 (1990).

##### Commercial or Financial Information:

The commercial or financial information prong of section 552.110 was amended by the Seventy-sixth Texas Legislature. The amendment became effective September 1, 1999. At the time of publication of this form, there were no cases or opinions construing the amended provision.

*Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.--Austin 1999, *pet. filed*) (construing previous version of section 552.110).

*National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Open Records Decision No. 639 (1996).

#### **Section 552.113: Geological or Geophysical Information**

Open Records Decision No. 627 (1994).

**Section 552.131: Economic Development Negotiation Information**

If you have questions about this notice or release of information under the Act, please refer to the Public Information Handbook published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To obtain copies of the Public Information Handbook or Attorney General Opinions, please go to the attorney general's website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the attorney general's Opinions Library at (512) 936-1730.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Patterson", with a stylized flourish at the end.

Robert W. Patterson  
Open Records Coordinator

Enc: Copy of request for information  
Request for open records decision

cc: Office of the Attorney General  
Price Daniel, Sr., State Office Building  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

## EXHIBIT A

# C A M P A I G N F O R ACCOUNTABILITY

June 4, 2018

By email: [OpenRecordsRequest@hhsc.state.tx.us](mailto:OpenRecordsRequest@hhsc.state.tx.us)

Open Records Coordinator  
Texas Health and Human Services Commission  
MC-1070  
4900 N. Lamar Boulevard  
Austin, Texas 78751-2316

## Re: Public Information Act Request

To Whom It May Concern:

Campaign for Accountability ("CfA") makes this request for public records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes, and photographs, pursuant to Tex. Gov. Code § 552.01 *et seq.*

Specifically, CfA seeks copies of all solicitations, grant proposals, grant agreements, reimbursement requests, and/or purchase orders pertaining to the Alternatives to Abortion program. This request is for records from January 1, 2018 to the present. CfA previously made similar requests to the Health and Human Services Commission (the "HHSC") in letters sent on February 20, 2018<sup>1</sup> and March 14, 2018<sup>2</sup>. CfA was advised by Cecilia Lynch of the HHSC that the HHSC was at the time working through the procurement process, and that in-progress documentation could not be released.<sup>3</sup> Ms. Lynch advised CfA to wait until at least April for the process to finish before requesting such records again.<sup>4</sup> Accordingly, this is CfA's follow-up request related to this matter.

By way of background, the Texas Legislature created an Alternatives to Abortion program by appropriation in 2005.<sup>5</sup> The program utilizes federal Temporary Assistance for Needy Families block grant funds to "implement a statewide program for women seeking alternatives to abortion focused on pregnancy support services that promote childbirth."<sup>6</sup> The legislature appropriated \$9.15 million annually to the program for fiscal years 2016 and 2017.<sup>7</sup> For fiscal years 2018 and

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<sup>1</sup> Public Records Request from Daniel Stevens, Executive Director of Campaign for Accountability, to Open Records Coordinator for the HHSC, February 20, 2018, attached as Exhibit A.

<sup>2</sup> Public Records Request from Daniel Stevens, Executive Director of Campaign for Accountability, to Open Records Coordinator for the HHSC, March 14, 2018, attached as Exhibit B.

<sup>3</sup> Email from Cecilia Lynch of the HHSC to Daniel Stevens, May 13, 2018, attached as Exhibit C.

<sup>4</sup> *Id.*

<sup>5</sup> S.B. 1 at II-111, 79<sup>th</sup> Leg., Reg. Sess. (Tex. 2005).

<sup>6</sup> *Id.*

<sup>7</sup> H.B. 1 at II-79, 84<sup>th</sup> Leg., Reg. Sess. (Tex. 2015).

Open Records Coordinator  
June 4, 2018  
Page 2

2019, the program was appropriated \$9.15 million annually,<sup>8</sup> and the Health and Human Services Commission was given authority to expend an additional \$20 million if it “determines that there is a demand based on program utilization.”<sup>9</sup> In November of last year, the Commission made such a determination.<sup>10</sup> The Texas Pregnancy Care Network serves as the “prime contractor” for the Alternatives to Abortion Program in Texas.<sup>11</sup>

If it is your position that any portion of the requested records is exempt from disclosure pursuant to Tex. Gov. Code Ch. 552, Subch. C, please state the basis of the exemption. Please explain in writing and with particularity the reasons for any determination that a record is exempt from disclosure. In the event that a portion of a requested record is properly exempt from disclosure, please redact that portion and produce the remainder of the requested record. If you deny this request in whole or in part, please specify each exemption on which you are relying to withhold information.

CfA is a non-profit organization and seeks the requested information to inform and educate the public about the state’s oversight responsibilities regarding public funding for private organizations. Accordingly, because CfA seeks the information to benefit the general public, we request that the information be provided without charge. Tex. Gov. Code § 552.267. If a fee waiver is not available, please inform me if the cost will exceed \$200. Tex. Gov. Code § 552.2615.

Please promptly produce the requested information. If, however, production cannot occur within ten business days, please certify that fact to us and provide a time when the information will be available. Tex. Gov. Code § 552.221(d). If you are unable to meet this statutorily required time period or foresee any problems in releasing the requested records in whole or in part, please contact me at 202-780-5750.

Finally, I welcome the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the Health and Human Services Commission to process it.

If possible, please email the records to me at [REDACTED]. If the records are mailed, please send them to: Campaign for Accountability, 611 Pennsylvania Avenue SE, #337, Washington, DC 20003.

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<sup>8</sup> S.B. 1 at II-37, 85<sup>th</sup> Leg., Reg. Sess. (Tex. 2017).

<sup>9</sup> S.B. 1 at II-75, 85<sup>th</sup> Leg., Reg. Sess. (Tex. 2017).

<sup>10</sup> Matthew Choi, State gives Alternatives to Abortion program \$20 million more in funding, *Texas Tribune*, Nov. 16, 2017, available at <https://www.texastribune.org/2017/11/16/alternatives-abortion-funding-increases-more-100-percent/>.

<sup>11</sup> <http://texaspregnancy.org/about>.

Open Records Coordinator  
June 4, 2018  
Page 3

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan E. Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens  
Executive Director

# EXHIBIT A



# C A M P A I G N F O R ACCOUNTABILITY

February 20, 2018

By email: [OpenRecordsRequest@hhsc.state.tx.us](mailto:OpenRecordsRequest@hhsc.state.tx.us)

Open Records Coordinator  
Texas Health and Human Services Commission  
MC-1070  
4900 N. Lamar Boulevard  
Austin, Texas 78751-2316

## Re: Public Information Act Request

To Whom It May Concern:

Campaign for Accountability (“CfA”) makes this request for public records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes, and photographs, pursuant to Tex. Gov. Code § 552.01 *et seq.*

Specifically, CfA seeks copies of all solicitations, grant proposals, grant agreements, reimbursement requests, and/or purchase orders pertaining to the Alternatives to Abortion program. This request is for records from September 1, 2015 to the present.

By way of background, the Texas legislature created an Alternatives to Abortion program by appropriation in 2005.<sup>1</sup> The program utilizes federal Temporary Assistance for Needy Families block grant funds to “implement a statewide program for women seeking alternatives to abortion focused on pregnancy support services that promote childbirth.”<sup>2</sup> The legislature appropriated \$9.15 million annually to the program for fiscal years 2016 and 2017.<sup>3</sup> For fiscal years 2018 and 2019, the program was appropriated \$9.15 million annually,<sup>4</sup> and the Health and Human Services Commission was given authority to expend an additional \$20 million if it “determines that there is a demand based on program utilization.”<sup>5</sup> In November of last year, the Commission made such a determination.<sup>6</sup> The Texas Pregnancy Care Network serves as the “prime contractor” for the Alternatives to Abortion Program in Texas.<sup>7</sup>

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<sup>1</sup> S.B. 1 at II-111, 79<sup>th</sup> Leg., Reg. Sess. (Tex. 2005).

<sup>2</sup> *Id.*

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<sup>4</sup> S.B. 1 at II-37, 85<sup>th</sup> Leg., Reg. Sess. (Tex. 2017).

<sup>5</sup> S.B. 1 at II-75, 85<sup>th</sup> Leg., Reg. Sess. (Tex. 2017).

<sup>6</sup> Matthew Choi, *State gives Alternatives to Abortion program \$20 million more in funding*, *Texas Tribune*, Nov. 16, 2017, available at <https://www.texastribune.org/2017/11/16/alternatives-abortion-funding-increases-more-100-percent/>.

<sup>7</sup> <http://texaspregnancy.org/about>.

Open Records Coordinator  
February 20, 2018  
Page 2

If it is your position that any portion of the requested records is exempt from disclosure pursuant to Tex. Gov. Code Ch. 552, Subch. C, please state the basis of the exemption. Please explain in writing and with particularity the reasons for any determination that a record is exempt from disclosure. In the event that a portion of a requested record is properly exempt from disclosure, please redact that portion and produce the remainder of the requested record. If you deny this request in whole or in part, please specify each exemption on which you are relying to withhold information.

CfA is a non-profit organization and seeks the requested information to inform and educate the public about the state's oversight responsibilities regarding public funding for private organizations. Accordingly, because CfA seeks the information to benefit the general public, we request that the information be provided without charge. Tex. Gov. Code § 552.267. If a fee waiver is not available, please inform me if the cost will exceed \$200. Tex. Gov. Code § 552.2615.

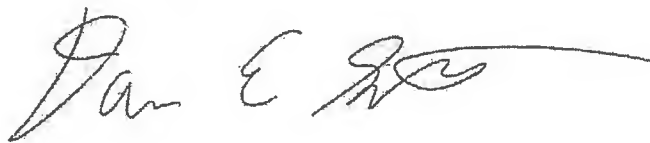
Please promptly produce the requested information. If, however, production cannot occur within ten business days, please certify that fact to us and provide a time when the information will be available. Tex. Gov. Code § 552.221(d). If you are unable to meet this statutorily required time period or foresee any problems in releasing the requested records in whole or in part, please contact me at 202-780-5750.

Finally, I welcome the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the Health and Human Services Commission to process it.

If possible, please email the records to me at [REDACTED]. If the records are mailed, please send them to: Campaign for Accountability, 611 Pennsylvania Avenue SE, #337, Washington, DC 20003.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan E. Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens  
Executive Director

# EXHIBIT B

# C A M P A I G N F O R ACCOUNTABILITY

March 14, 2018

By email: [OpenRecordsRequest@hhsc.state.tx.us](mailto:OpenRecordsRequest@hhsc.state.tx.us)

Open Records Coordinator  
Texas Health and Human Services Commission  
MC-1070  
4900 N. Lamar Boulevard  
Austin, Texas 78751-2316

## **Re: Public Information Act Request**

To Whom It May Concern:

Campaign for Accountability (“CfA”) makes this request for public records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes, and photographs, pursuant to Tex. Gov. Code § 552.01 *et seq.*

Specifically, CfA seeks copies of all solicitations, grant proposals, grant agreements, reimbursement requests, and/or purchase orders pertaining to the Alternatives to Abortion program. This request is for records from September 1, 2015 to the date of the completion of the most recently completed procurement process for the program.

By way of background, the Texas legislature created an Alternatives to Abortion program by appropriation in 2005.<sup>1</sup> The program utilizes federal Temporary Assistance for Needy Families block grant funds to “implement a statewide program for women seeking alternatives to abortion focused on pregnancy support services that promote childbirth.”<sup>2</sup> The legislature appropriated \$9.15 million annually to the program for fiscal years 2016 and 2017.<sup>3</sup> For fiscal years 2018 and 2019, the program was appropriated \$9.15 million annually,<sup>4</sup> and the Health and Human Services Commission was given authority to expend an additional \$20 million if it “determines that there is a demand based on program utilization.”<sup>5</sup> In November of last year, the Commission made such a determination.<sup>6</sup> The Texas Pregnancy Care Network serves as the “prime contractor” for the Alternatives to Abortion Program in Texas.<sup>7</sup>

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<sup>1</sup> S.B. 1 at II-111, 79<sup>th</sup> Leg., Reg. Sess. (Tex. 2005).

<sup>2</sup> *Id.*

<sup>3</sup> H.B. 1 at II-79, 84<sup>th</sup> Leg., Reg. Sess. (Tex. 2015).

<sup>4</sup> S.B. 1 at II-37, 85<sup>th</sup> Leg., Reg. Sess. (Tex. 2017).

<sup>5</sup> S.B. 1 at II-75, 85<sup>th</sup> Leg., Reg. Sess. (Tex. 2017).

<sup>6</sup> Matthew Choi, *State gives Alternatives to Abortion program \$20 million more in funding*, *Texas Tribune*, Nov. 16, 2017, available at <https://www.texastribune.org/2017/11/16/alternatives-abortion-funding-increases-more-100-percent/>.

<sup>7</sup> <http://texaspregnancy.org/about>.

Open Records Coordinator  
March 14, 2018  
Page 2

If it is your position that any portion of the requested records is exempt from disclosure pursuant to Tex. Gov. Code Ch. 552, Subch. C, please state the basis of the exemption. Please explain in writing and with particularity the reasons for any determination that a record is exempt from disclosure. In the event that a portion of a requested record is properly exempt from disclosure, please redact that portion and produce the remainder of the requested record. If you deny this request in whole or in part, please specify each exemption on which you are relying to withhold information.

CfA is a non-profit organization and seeks the requested information to inform and educate the public about the state's oversight responsibilities regarding public funding for private organizations. Accordingly, because CfA seeks the information to benefit the general public, we request that the information be provided without charge. Tex. Gov. Code § 552.267. If a fee waiver is not available, please inform me if the cost will exceed \$200. Tex. Gov. Code § 552.2615.

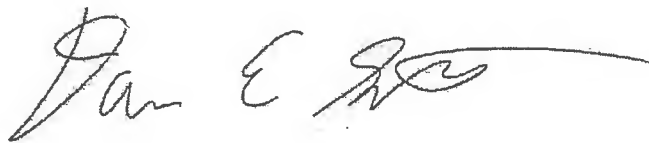
Please promptly produce the requested information. If, however, production cannot occur within ten business days, please certify that fact to us and provide a time when the information will be available. Tex. Gov. Code § 552.221(d). If you are unable to meet this statutorily required time period or foresee any problems in releasing the requested records in whole or in part, please contact me at 202-780-5750.

Finally, I welcome the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the Health and Human Services Commission to process it.

If possible, please email the records to me at [REDACTED]. If the records are mailed, please send them to: Campaign for Accountability, 611 Pennsylvania Avenue SE, #337, Washington, DC 20003.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan E. Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens  
Executive Director

# EXHIBIT C

## RE: Stevens OR-20180220-14544 - Response

Lynch,Cecilia (HHSC/DARS) <cecilia.lynch@hhsc.state.tx.us>

Tue 3/13/2018 1:18 PM

Archive

To: Daniel Stevens [REDACTED]

Mr. Stevens:

In response to your request below, please see Tex. Gov't Code §552.104: Information Relating to Competition or Bidding.

If you would like to request information from prior years, please make another open records request to: [OpenRecordsRequest@hhsc.state.tx.us](mailto:OpenRecordsRequest@hhsc.state.tx.us). Yes, you can follow up and send another open records request for information after the procurement process is complete.

Best regards,  
Cecilia Lynch

---

**From:** Daniel Stevens [mailto:[REDACTED]]

**Sent:** Thursday, March 08, 2018 2:33 PM

**To:** Lynch,Cecilia (HHSC/DARS) <cecilia.lynch@hhsc.state.tx.us>

**Subject:** Re: Stevens OR-20180220-14544 - Response

Good Afternoon,

We've reviewed your email, and we're not sure which section of the Texas code you are relying on. Can you clarify?

Also, can you release information from prior years, and we can follow up and ask for new information after the current procurement process is completed?

Thanks!

Dan

---

Daniel Stevens

Executive Director

Campaign for Accountability

202.780.5750 (o)

<http://campaignforaccountability.org/>

@Accountable\_Org

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**From:** Daniel Stevens

**Sent:** Thursday, March 8, 2018 9:38:57 AM

**To:** Lynch,Cecilia (HHSC/DARS)

**Subject:** Re: Stevens OR-20180220-14544 - Response

Ok, thanks for letting me know.

---  
Daniel Stevens  
Executive Director  
Campaign for Accountability  
202.780.5750 (o)  
<http://campaignforaccountability.org/>  
@Accountable\_Org

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**From:** Lynch, Cecilia (HHSC/DARS) <[cecilia.lynch@hhsc.state.tx.us](mailto:cecilia.lynch@hhsc.state.tx.us)>  
**Sent:** Wednesday, March 7, 2018 5:04:33 PM  
**To:** Daniel Stevens  
**Subject:** Stevens OR-20180220-14544 - Response

March 7, 2018

Via Email: [REDACTED]  
Mr. Daniel Stevens  
Campaign for Accountability

Re: Stevens OR-20180220-14544

Dear Mr. Stevens:

HHSC received your open records request on February 20, 2018. You requested the below information.

*"...Specifically, CfA seeks copies of all solicitations, grant proposals, grant agreements, reimbursement requests, and/or purchase orders pertaining to the Alternatives to Abortion program. This request is for records from September 1, 2015 to the present...."*

HHSC is in the procurement process, and cannot release documentation until after the process is complete. We recommend that you re-request this information in early April.

Sincerely,  
Cecilia Lynch  
Paralegal  
Open Records and Subrogation  
Office of Chief Counsel  
Health and Human Services Commission  
(512) 424-6619 (phone)  
(512) 424-6665 (fax)

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## EXHIBIT B



# TEXAS

Health and Human  
Services

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June 18, 2018

Justin Gordon  
Office of the Attorney General  
Open Records Division  
Price Daniel, Sr., State Office Building  
P.O. Box 12548  
Austin, Texas 78711

Re: Request for open records decision  
**HHSC ID# 15461**

Dear Mr. Gordon:

On June 4, 2018, the Health and Human Services Commission (the Commission) received an open records request from Daniel Stevens of Campaign For Accountability. A copy of Mr. Steven's request is enclosed as **Exhibit A**.

Mr. Stevens has requested copies of certain documents pertaining to a contract award to administer the Commission's Alternative to Abortion Program. The Commission is still in the process of gathering the requested documents. Once this has been accomplished, the Commission will provide your office with a copy of the notification letter to the interested third party as required under section 552.305 of the Government Code and the documents at issue.

If your staff has any questions about this correspondence, please contact Robert Patterson, Open Records Coordinator, at 512-424-6910.

Sincerely,

Carey E. Smith  
Senior Attorney

Enclosure

cc: Daniel Stevens  
Campaign For Accountability  
611 Pennsylvania Avenue SE, #337  
Washington, D.C. 20003  
(w/o enclosures)